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**IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF UTAH, CENTRAL DIVISION**

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JILL MILLER TARBET and LISA MILLER,  
Plaintiffs,  
vs.  
MATTHEW E. MILLER; ANGELES A.  
ACEITUNA, a.k.a. ANGELES A. MILLER; and  
JOHN AND JANE DOES I-VI,  
Defendants.

**RULE 12(b)(6) MOTION TO  
DISMISS**

Case No: 2:05 cv 00635 PGC

Hon. Judge Paul G. Cassell

COME NOW the Defendants, through their attorneys of the law firm Ascione, Heideman & McKay, L.L.C., pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure and hereby move the Court for an order dismissing all sections of Plaintiffs' Complaint related to Plaintiffs' cause of action for fraud, which cause of action is the sixth cause of action set forth in Plaintiffs' First Amended Complaint.

Plaintiffs have failed to plead their cause of action for fraud with the required standard of particularity imposed by Rule 9(b) of the Federal Rules of Civil Procedure and therefore the Court should dismiss such cause of action for "failure to state a claim upon which relief can be granted" pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Defendants' instant motion is accompanied by a supporting Memorandum of Points and Authorities.

SIGNED and DATED this 27th day of February, 2006.

**ASCIONE, HEIDEMAN & MCKAY, L.L.C.**

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JERRY D. REYNOLDS,  
Attorney for Defendants